IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.121 of 1979

Judgment reserved on 3.4.2006

Date of decision 10.4.2006

Deepak Chandel & others **…Appellants.**

Versus

Megh Singh & others **…Respondents.**

Coram

The Hon'ble Mr. Justice : **Surjit Singh, Judge.**

Whether approved for reporting?[1]

For the appellants: Mr.K.D. Sood, Advocate.

For respondents : Mr.Bhupender Gupta, Sr. Advocate, with Mr. Janesh Gupta, Advocate, for Respondents No. 2(a) to 2(e).

Surjit Singh, Judge

This appeal, by the plaintiffs / appellants, is directed against the judgment and decree of the first appellate Court (Additional District Judge), whereby decree dated 26.6.1972,

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Whether the reporters of the local papers may be allowed to see the judgment?

passed by the trial Court in favour of the appellants / plaintiffs in a suit instituted by them, has been set aside and the suit dismissed.

2. Relevant facts may be summed up thus. Appellants / plaintiffs filed a suit for possession of 22 Bighas, 13 Biswas of land bearing Khasra Nos. 19, 20, 21, 22, 23, 24 and 25, situate in Mohal Khilra, Tehsil Sundernagar, District Mandi, hereinafter referred to as the suit land, pleading the following cause of action.

3. One Shri Padu was the owner of the suit land. On his death his widow Achhri inherited life interest in it. Through a sale deed dated 7.12.1950 said Achhri transferred the suit property in favour of defendants Keshab and Titia (now both deceased and represented by their legal representatives.) The sale was challenged by the plaintiffs in their capacity as reversioners of Padu, by filing a suit in the Civil Court. The Civil Court passed a decree in their favour. The sale was set aside with the finding that Achhri had only limited interest, that is widow's estate, in the property and so she could not have transferred the ownership in favour of the defendants. The appeal filed against the decree of the trial Court was dismissed, both by the District Judge and the Judicial Commissioner. About fifteen months before the filing of the suit, out of which the appeal has arisen (the suit was filed on 2.4.1971), Achhri died. The plaintiffs then filed the present suit seeking possession of the suit land. It was alleged that the sale, having been set aside in the suit filed by them earlier, they were entitled to

the possession of the suit land on the death of Achhri, being the reversioners of Padu.

4. Defendants / respondents contested the suit. They alleged that Keshab had been in occupation of the suit land in the capacity of tenant even prior to the sale by Achhri and, therefore, he had the right to remain in occupation even after the setting aside of the sale because of his status as a tenant. It was denied that Titia, who was a co-purchaser with Keshab from Achhri, had ever been in possession of any portion of the suit land. It was also denied that tenancy had been created in favour of Padu by defendants Keshab and Titia. All the three defendants filed a common written statement, which means that what-ever is stated in the written statement, binds all of them.

5. Learned trial Court rejected the plea of the defendants that Keshab was a tenant on the suit land prior to the making of sale in his favour by Achhri and passed a decree for possession in favour of the plaintiffs. The defendants filed an appeal, which came to be decided by the Additional District Judge, who reversed the finding of the trial Court that Keshab was not a tenant and instead held that he was a tenant prior to the sale in his favour and that he had never relinquished his tenancy rights. The learned Additional District Judge also observed that though it had not been pleaded that on account of coming into force of the Hindu Succession Act, Achhri had become absolute owner, yet this being a totally legal

issue, the same could be gone into in appeal. The learned Additional District Judge concluded that Achhri was possessed of the property and that even though her possession was not physical, it could be taken to be constructive. With these findings / observations the appeal was accepted and the decree, passed in favour of the plaintiffs, was set aside.

6. Appellants / plaintiffs came in appeal to this Court and challenged the findings and the decree of dismissal of their suit, passed by the learned Additional District Judge, on the following grounds:-

(a) Additional evidence led in the form of copy of Jamabandi for the year 1948-49 disproved the plea of respondent Keshab that he was a tenant on the suit land at the time of the sale;

(b) Findings of the appellate Court that Achhri became the absolute owner of the property on account of coming into force of Hindu Succession Act, was unwarranted;

(c) The suit land being uncultivated because of its being **Ghasni** land, question of inducting anybody as a tenant on this land did not arise, one of the defendants, namely Titia, who was appellant before the first appellate Court, died during the pendency of the appeal before the additional District Judge, but his legal representatives were not brought on record and the appeal thus abated as a whole and the first appellate Court did not appreciate the evidence in the right perspective.

7. This Court, vide judgment dated September 21, 1990 accepted the appeal, set aside the judgment and decree of the lower appellate Court and restored those of the trial Court, holding that what-ever rights defendant Keshab had in the suit property, prior to the sale in his favour by Achhri, merged in ownership rights and thus he ceased to be a tenant and his tenancy rights did not revive on account of setting aside of the sale by the Court in the earlier suit. It was further held that the first appellate Court was not right in holding that Achhri became absolute owner after the coming into force of the Hindu Succession Act, because she was not possessed of the suit property as she had already parted with the same in favour of Keshab through sale deed dated 7.12.1950.

8. Appeal was filed against the aforesaid judgment of this Court in the Hon'ble Supreme Court. The Hon'ble Supreme Court, vide order dated October 14, 2003 has held that this is not a case of merger; for Achhri made sale of only a part of the property in favour of Keshab, the remaining part having been sold to Titia and thus Keshab, who was tenant over the entire suit property, did not acquire ownership right qua the entire suit property; more-so, when sale deed, executed by Achhri had been annulled by the decree of the Civil Court passed in the earlier instituted suit and tenancy of Keshab did not come to an end and was not extinguished. With the aforesaid findings, the Hon'ble Supreme Court has remanded the case to this Court for hearing and decision afresh.

9. When the matter was taken up for hearing afresh, the learned counsel representing the appellants, submitted in writing "substantial questions of law", which are as follows:-

"1. Whether in view of the fact that Smt. Achhri who was a limited owner of the suit property and had transferred her entire right, title or interest in favour of Keshav and Titia vide registered sale deed dated 7.12.1950 which sale deed had been declared null and void being without legal necessity and not affecting the reversionary rights of the plaintiff, whether Smt. Achhri could become the full owner of the suit property, by virtue of Section 4(1) of the Hindu Succession Act?

2. Whether on the proper construction of the pleadings of the parties and evidence on record Section 14(1) or (2) of the Hindu Succession Act could apply to the property which had been transferred by Achhri in favour of Keshav and Titia prior to the coming in force of the Hindu Succession Act?
3. Whether the findings of the Ld. Distt. Judge holding Keshav to be the tenant of the suit land is perverse, based on mis-reading of oral and documentary evidence and on wrong assumption not warranted on the material on record?
4. Whether the judgment of the Distt. Judge is illegal and a nullity being passed in favour of a dead person, and the appeal before the District Judge had abated for not impleading the heirs of Titia who had died in September, 1974 during the pendency of the appeal?"

10. I have heard the learned counsel for the parties and gone through the record.

11. As regards questions No. 1 and 2, as a matter of fact from the pleadings of the parties these questions do not arise. It is not pleaded by the defendants that Achhri had become an absolute owner of the suit property on account of coming into force of the Hindu Succession Act. Further, even though the sale deed made by Achhri in favour of the reversioners had been set aside, that was on account of the fact that Achhri had only a widow's estate in the property and she could not have transferred the full ownership rights. The finding, however, did not mean that she could not have transferred even her own limited interest. As a matter of fact, the operative part of the judgment delivered by the learned District Judge in the earlier suit, copy whereof is Ext. PA, also makes it clear that what was ordered by the Court, was that the sale was void as regards the interest of the reversioners of Padu, the husband of Achhri, meaning thereby that the transfer as regards Achhri's limited interest remained unaffected by the decree. If that is so, it cannot be said that Achhri was possessed of any right in the suit land, when the Hindu Succession Act came into force. She was neither in physical, nor in constructive possession. Admittedly, the sale was made in the year 1950, long before the coming into force of the Hindu Succession Act and thus Achhri was not possessed of the property when the Act came into force.

12. In view of the above discussion, the finding / observation by the first appellate Court that Achhri had acquired full

ownership on coming into force of the Hindu Succession Act, cannot be sustained.

13. Coming to question No. 3, as formulated and submitted for consideration to the Court, the learned counsel for the appellants urged that the finding of the first appellate Court that Keshab deceased respondent / defendant was a tenant qua the suit land prior to the sale in his favour by Achhri, is perverse being not supported by the evidence on record. He submitted that the latest Jamabandi for the year 2004-2005 Bikarami, corresponding to 1948-49 A.D., records one Narpat in possession of the suit land as a tenant and in the face of this entry, the learned first appellate Court could not have returned the finding that Keshab alienee was a tenant prior to the alienation in his favour.

14. There is also on the record Jamabandi for Bikrami Samvat 2000-2001, corresponding to 1944-45, copy Ext. DW-1/A, per which Keshab is recorded as tenant on the suit land under the husband of Smt. Achhri alienor. The learned first appellate Court has observed that the change in the subsequent Jamabandi, i.e. for Samvat 2004-2005, corresponding to 1948-49, is without any basis, inasmuch as there is no **Rojnamcha** entry or an entry in **Khasra Girdawari** or any other material supporting the change. Therefore, the first appellate Court has disbelieved the Jamabandi, copy Ext. R-2 and placed reliance upon the earlier Jamabandi Ext. DW-1/A. The learned first appellate Court has also placed reliance upon oral evidence adduced by the parties. The oral evidence not only corroborates the entry in the earlier Jamabandi, copy Ext. DW-1/A in which Keshab is recorded as tenant, but also contradicts the entry in Jamabandi Ext. R-2.

15. The above stated position apart, as already noticed, this Court, while disposing of the appeal, vide judgment dated 21.9.1990, held that this was a case of merger of tenancy rights with ownership rights, because Keshab was holding the land as a tenant prior to the transfer of ownership rights in his favour by Achhri. This finding was challenged by the respondents / plaintiffs by filing S.L.P. in the Hon'ble Supreme Court. The Hon'ble Supreme Court has held that this was not a case of merger, for the entire suit property had not been transferred in favour of Keshab by Achhri but only 3/4th share had been transferred, the remaining 1/4th having been transferred in favour of Titia and secondly, when in the earlier suit filed by the plaintiffs, the sale made by Achhri in favour of Keshab and Titia, had been held to be void, the tenancy rights of Keshab did not extinguish. It is implicit in these observations of the Hon'ble Supreme Court that while remanding the appeal, the Hon'ble Supreme Court has upheld the finding that Keshab was a tenant on the suit land prior to the making of the sale in his favour by Achhri. Not only this, the Hon'ble Supreme Court has further held that the sale made by Achhri having been set aside, tenancy rights of Keshab, could not be said to have extinguished.

16. Learned counsel for the appellants argued that the rejection of claim of merger by the Hon'ble Supreme Court is not based on specific finding that Keshab was a tenant prior to sale in his favour, but just on supposition. An overall reading of the order of the Hon'ble Supreme Court negates the argument.

17. It was then urged that once the case has been remanded by the Hon'ble Supreme Court, this Court has to re-examine the question

whether Keshab was a tenant on the suit land prior to the sale in his favour by Achhri. The argument has been noticed only to be rejected. It is by now well settled that where a superior Court, in an order of remand, records its own findings / views, the Court to which the case is remanded, has to base its findings in line with the findings / views of the superior Court.

18. As regards the last formulated point, viz. the appeal in the Court of the learned District Judge had abated on account of failure of the respondents / defendants, who were appellants before the learned District Judge, to bring on record the legal representatives of deceased Titia, no doubt in the grounds of appeal it is stated that Titia had died on 1.9.1974, when the appeal was still pending in the Court of the learned District Judge, but there is no material on record in support of this contention. In fact the appellants themselves moved an application in this Court for bringing on record the legal representatives of Titia. This application was moved on 7.7.2004. The date of death of Titia is not mentioned in the application. Prayer is made in the application for bringing on record the legal representatives of Titia, who are named in the application itself. The date having not been mentioned in this application and prayer having been made for bringing on record of the present appeal the legal representatives of Titia, it cannot be said that Titia died when the appeal was pending in the Court of the learned District Judge. The application moved by the appellants for bringing on record the legal representatives of Titia was allowed by this Court vide order dated 21.9.2004. In view of what has been stated above, it cannot be said that the appeal filed by the respondents in the Court of the learned District Judge had abated.

19. The Hon'ble Supreme Court, while remanding the case, has observed that the property being agricultural land and several tenancy laws, which have bearing on the factual events of the present case, having been enacted, questions would arise for decision as to what is the effect of such laws on tenancy rights of Keshab, whether by such effect the tenancy rights of Keshab stand enlarged into full ownership or some other higher rights and whether the successors of the owners, who created the tenancy, would be entitled to restoration of possession from the tenants and which would be the proper forum for initiating such legal proceedings and seeking adjudication of such rights.

20. The facts of the case, as noticed in detail here-in-above, are plain and simple. The plaintiffs sought a decree for possession on the strength of an earlier decree, whereby sale made in favour of the defendants by Achhri, holder of widow's estate, was held to be void as against the rights of the plaintiffs. The defendants resisted the claim, inter alia, on the ground that even though the sale had been declared to be void, they could not be dispossessed, because before the making of sale in their favour, one of them had the possession of the suit property as a tenant. Finding has been recorded here-in-above that Keshab, defendant was in possession of the suit land as a tenant even prior to the making of sale in his favour and that with the passing of the decree in the earlier suit holding the sale void, his tenancy rights did not extinguish. The Civil Court cannot pass a decree for ejectment of a tenant. It is only the Revenue Courts which have the jurisdiction in such matters. Even the Revenue Courts cannot pass a decree for ejectment of a tenant on the asking of the land-owner. The land-owner has to allege and prove certain

specified grounds, which find mention in the H.P. Tenancy & Land Reforms Act. Not only this, by virtue of Section 104 of the H.P. Tenancy & Land Reforms Act, tenants have become owners of the tenanted land. Of course, right has been reserved to the land-owner to seek resumption of land to the extent that his total holding does not exceed a certain specified upper ceiling. The forum for deciding all these matters is the Land Reforms Officer and not the Civil Court. Therefore, these questions are not required to be gone into and dealt with by this Court, but by the Land Reforms Officer.

21. As a result of the above stated position, the appeal is dismissed.

April 10, 2006 (BC) **(Surjit Singh)**
Judge